

**DECISION**

95350  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

50540  
FEB 12 1975

FILE:

B-181632

DATE:

MATTER OF:

Lawrence J. McCarren Overtime Compensation Claim

DIGEST:

Where former GSA employee seeks overtime compensation for 40 hours allegedly worked on 5 separate Saturdays, 8 hours each, which is in addition to overtime already claimed to have been worked on Saturdays in question and for which compensation has been made, and only evidence to support claim is list of hours worked, settlement disallowing claim is sustained since mere listing of time worked is of insufficient probative value to permit payment of claim. Where claim is of doubtful validity due to lack of suitable evidence, our practice is to deny claim and leave claimant to remedy in court. Longwill v. United States 17 Ct. Cl. 288 (1881).

This matter is a reconsideration of the action by our Transportation and Claims Division which by Settlement Certificate dated April 15, 1974, disallowed the claim of Mr. Lawrence J. McCarren, a former employee of the General Services Administration (GSA), for overtime compensation allegedly earned while assigned to duty with the Office of Emergency Preparedness (now Federal Disaster Assistance Administration) from July 1972, until October 1972, in the Hamburg, Pennsylvania, area.

Mr. McCarren who is a mechanical engineer, was a member of the Civil Defense Damage Assessment Team, Region-2 of GSA and during the period of July 1972, until October 1972, he was assigned first to the Wilkes-Barre, and then to the Hamburg, Pennsylvania, area in the Hurricane Agnes Flood Disaster Area under the direction of the Office of Emergency Preparedness (OEP). During this period, Mr. McCarren alleges that he worked considerable overtime at the direction and approval of various officials both of OEP and GSA.

On June 9, 1973, Mr. McCarren submitted corrected time cards claiming 52 hours overtime, and on June 15, 1973, a check was issued to him for 50 of those 52 hours. By letter dated July 11, 1973,

Mr. McCarren informed Mr. James W. Hardgrove, Director of Personnel, GSA, that he had not been paid for 2 of the 52 hours he had previously claimed. He also stated that, "I feel I am entitled to be paid for the five (5) Saturdays and the Labor Day Holiday." and he enclosed in his letter a chart which provided in pertinent part as follows:

"Total Overtime 52 hrs O.E.P. Hamburg, Pa.  
The following days recorded each Month

July O.T.	August O.T.	September O.T.	October O.T.
28 2	28 2	1 2	4 2
29 2 Sat	29 2	2 3 Sat	5 2
31 <u>2</u>	30 2	4 2 Labor Day	6 2
6 hrs	31 <u>2</u>	6 2	7 3 Sat
	8 hrs	8 2	9 2
		9 3 Sat	11 2
		11 2	12 2
		12 <u>2</u>	14 3 Sat
		13 hrs	16 <u>2</u>
			20 hrs"

It is noted that the corrected time cards submitted by Mr. McCarren on June 9, 1973, for 52 hours of overtime covered the same dates set out in this chart.

After receiving Mr. McCarren's letter of July 11, 1973, the GSA regional staff reviewed his time cards for the period of July through October 1972, and it was found that he had not been paid for 2 of the 52 hours of overtime claimed and further, he had not received holiday rates for Columbus Day and Labor Day. On August 24, a supplemental check was issued to cover these omissions. As for the 5 Saturdays and Labor Day referred to in his letter of July 11, 1973, since overtime for these dates was included in Mr. McCarren's initial claim for 52 hours submitted on June 9, 1973, it would seem reasonable for the agency to have assumed that he had been compensated for all the overtime he claimed to have worked. This is reinforced by the fact that the letter of July 11, 1973, nowhere makes mention of any overtime for those particular dates other than that which is shown in the chart set out above.

However, Mr. McCarren subsequently requested overtime compensation for 8 hours reportedly worked on July 29, September 2, September 9, October 7, and October 14 for a total of 40 hours. These 40 hours are in addition to the hours Mr. McCarren had already been

compensated for on these particular dates as a result of his submission of the corrected time cards on June 9, 1973.

In response to this request Mr. McCarren was advised on September 13, 1973, by the Chief of the Compensation Branch that:

"At this late date, you claim an additional 40 hours of overtime for the five Saturdays listed. I have discussed this claim with the Director, Finance Division, the Chief, Employees Accounts Branch, and the Director, Design and Construction Division. The Finance Division advises that they cannot pay in the absence of a certification that the hours claimed were worked and authorized. The only office that can provide such a certification is the Design and Construction Division. D&C advises that they have certified the hours that were reported to them, and they have no basis for any further action.

"In view of the above, I am terminating any further investigation of the matter by this office. If you believe that you have not been treated fairly, I suggest you furnish any evidence to the contrary directly to the Director, Design and Construction Division, or to the Chief, Design Branch . . . ."

Mr. McCarren received a similar response from the Director of Personnel and it was suggested that he discuss with the Director, Design and Construction what evidence they would accept to substantiate his claim.

Thereafter, Mr. McCarren wrote the Director of Personnel, but, since no new evidence was submitted with his letter and inquiries to New York indicated that he had made no attempt to contact Director of Design and Construction, his request for additional compensation was again denied.

Thereupon, a claim was filed with this Office for the 40 hours overtime for which he said he had not been compensated. This claim was disallowed and the Settlement Certificate stated that in the absence of a showing that this claimed overtime was either ordered or approved by proper authority, this Office is without authority to authorize allowance of the claim.

As to whether the additional overtime was ordered or approved, we note that Mr. McCarren has already been compensated for the overtime originally claimed for the 5 Saturdays in question. This would strongly indicate that such overtime was either ordered or approved.

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However, assuming for the moment that such overtime was ordered or approved, a problem still exists as to whether the hours claimed were actually worked.

We note that Mr. McCarren was twice advised that the Design and Construction Division was the only office that could certify his claim for payment. He was further advised that the Director of Design and Construction would discuss what evidence they would accept to substantiate his claim. However, there is no indication that such was ever done.

We also note that Mr. McCarren has supplied this Office only with a listing of the hours allegedly worked. However, we cannot consider a mere listing of time worked to be of sufficient probative value to permit payment of this claim. In a case such as this where the claim is of doubtful validity due to lack of suitable evidence it is our practice to deny payment and leave the claimant to his remedy in the courts under the principles of Longwill v. United States 17 Ct. Cl. 288 (1881).

R.F.KELLER

Acting            Comptroller General  
                  of the United States